



General Assembly

February Session, 2010

Raised Bill No. 5366

LCO No. 1342

01342_____GAE

Referred to Committee on Government Administration and Elections

Introduced by:
(GAE)

AN ACT CONCERNING THE DISQUALIFICATION OF STATE CONTRACTORS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4b-95 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2010*):

3 (a) The awarding authority shall furnish to every person applying
4 therefor a form for general bid.

5 (b) Every general bid submitted for a contract subject to this chapter
6 shall be submitted on a form furnished by the awarding authority. The
7 form provided by the awarding authority shall provide a place for
8 listing the names and prices of subcontractors for the four classes of
9 work specified in subsection (a) of section 4b-93, and for each other
10 class of work included by the awarding authority pursuant to said
11 subsection and state that: (1) The undersigned agrees that if selected as
12 general contractor, he shall, within five days, Saturdays, Sundays and
13 legal holidays excluded, after presentation thereof by the awarding
14 authority, execute a contract in accordance with the terms of the

15 general bid; (2) the undersigned agrees and warrants that he has made
16 good faith efforts to employ minority business enterprises as
17 subcontractors and suppliers of materials under such contract and
18 shall provide the Commission on Human Rights and Opportunities
19 with such information as is requested by the commission concerning
20 his employment practices and procedures as they relate to the
21 provisions of the general statutes governing contract requirements;
22 and (3) the undersigned agrees that each of the subcontractors listed
23 on the bid form will be used for the work indicated at the amount
24 stated, unless a substitution is permitted by the awarding authority.
25 The awarding authority may require in the bid form that the general
26 contractor agree to perform a stated, minimum percentage of work
27 with his own forces.

28 (c) General bids shall be for the complete work as specified and shall
29 include the names of any subcontractors for the four classes of work
30 specified in subsection (a) of section 4b-93, and for each other class of
31 work for which the awarding authority has required a separate section
32 pursuant to said subsection and the dollar amounts of their
33 subcontracts, and the general contractor shall be selected on the basis
34 of such general bids. It shall be presumed that the general bidder
35 intends to perform with its own employees all work in such four
36 classes and such other classes, for which no subcontractor is named.
37 The general bidder's qualifications for performing such work shall be
38 subject to review under section 4b-92. Every general bid which is
39 conditional or obscure, or which contains any addition not called for,
40 shall be invalid; and the awarding authority shall reject every such
41 general bid. The awarding authority shall be authorized to waive
42 minor irregularities which he considers in the best interest of the state,
43 provided the reasons for any such waiver are stated in writing by the
44 awarding authority and made a part of the contract file. No such
45 general bid shall be rejected because of the failure to submit prices for,
46 or information relating to, any item or items for which no specific
47 space is provided in the general bid form furnished by the awarding
48 authority, but this sentence shall not be applicable to any failure to

49 furnish prices or information required by this section to be furnished
50 in the form provided by the awarding authority. General bids shall be
51 publicly opened and read by the awarding authority forthwith. The
52 awarding authority shall not permit substitution of a subcontractor for
53 one named in accordance with the provisions of this section or
54 substitution of a subcontractor for any designated subtrade work bid
55 to be performed by the general contractor's own forces, except for
56 good cause. The term "good cause" includes, but is not limited to, a
57 subcontractor's or, where appropriate, a general contractor's: (1) Death
58 or physical disability, if the listed subcontractor is an individual; (2)
59 dissolution, if a corporation or partnership; (3) bankruptcy; (4) inability
60 to furnish any performance and payment bond shown on the bid form;
61 (5) inability to obtain, or loss of, a license necessary for the
62 performance of the particular category of work; (6) failure or inability
63 to comply with a requirement of law applicable to contractors,
64 subcontractors, or construction, alteration, or repair projects; (7) failure
65 to perform his agreement to execute a subcontract under section 4b-96.

66 (d) The general bid price shall be the price set forth in the space
67 provided on the general bid form. No general bid shall be rejected (1)
68 because of error in setting forth the name of a subcontractor as long as
69 the subcontractor or subcontractors designated are clearly identifiable,
70 or (2) because the plans and specifications do not accompany the bid or
71 are not submitted with the bid. Failure to correctly state a
72 subcontractor's price shall be cause for rejection of the general bidder's
73 bid.

74 [(e) Any general contractor who violates any provision of this
75 section shall be disqualified from bidding on other contracts that are
76 subject to the provisions of this chapter for a period not to exceed
77 twenty-four months, commencing from the date on which the violation
78 is discovered, for each violation. The awarding authority shall
79 periodically review the general contractor's subcontracts to insure
80 compliance with such provisions, and shall after each such review
81 prepare a written report setting forth its findings and conclusions.]

82 Sec. 2. Subsection (c) of section 4a-100 of the 2010 supplement to the
83 general statutes is repealed and the following is substituted in lieu
84 thereof (*Effective July 1, 2010*):

85 (c) The application form shall, at a minimum, require the applicant
86 to supply information concerning:

87 (1) The applicant's form of organization;

88 (2) The applicant's principals and key personnel and any names
89 under which the applicant, principals or key personnel conducted
90 business during the past five years;

91 (3) Any legal or administrative proceedings pending or concluded
92 adversely against the applicant or any of the applicant's principals or
93 key personnel within the past five years which relate to the
94 procurement or performance of any public or private construction
95 contract and whether the applicant is aware of any investigation
96 pending against the applicant or any principal or key personnel;

97 (4) The nature of any financial, personal or familial relationship
98 between the applicant and any public or private construction project
99 owner listed on the application as constituting construction experience;

100 (5) A statement of whether (A) the applicant has been disqualified
101 pursuant to [section 4b-95,] this section or section 31-57c, as amended
102 by this act, or 31-57d, as amended by this act, (B) the applicant is on the
103 list distributed by the Labor Commissioner pursuant to section 31-57a,
104 (C) the applicant is disqualified or prohibited from being awarded a
105 contract pursuant to section 31-57b, (D) the applicant has been
106 disqualified by another state, (E) the applicant has been disqualified by
107 a federal agency or pursuant to federal law, (F) the applicant's
108 registration has been suspended or revoked by the Department of
109 Consumer Protection pursuant to section 20-341gg, (G) the applicant
110 has been disqualified by a municipality, and (H) the matters that gave
111 rise to any such disqualification, suspension or revocation have been

112 eliminated or remedied; and

113 (6) Other information as the commissioner deems relevant to the
114 determination of the applicant's qualifications and responsibilities.

115 Sec. 3. Section 31-57c of the general statutes is repealed and the
116 following is substituted in lieu thereof (*Effective July 1, 2010*):

117 (a) As used in this section, the term "contractor" [shall mean] means
118 any person, firm or corporation which has contracted or seeks to
119 contract with the state, or to participate in such a contract, in
120 connection with any public works of the state or a political subdivision
121 of the state.

122 (b) Disqualification of a contractor is a serious action that shall be
123 used only in the public interest and for the state government's
124 protection and not for purposes of punishment or in lieu of other
125 applicable enforcement or compliance procedures. The causes for and
126 consequences of disqualification under this section shall be separate
127 from and in addition to causes for and consequences of
128 disqualification under sections [4b-95,] 31-53a, 31-57a and 31-57b.

129 (c) The Commissioner of Public Works may disqualify any
130 contractor, for up to [two] five years, from bidding on, applying for, or
131 participating as a subcontractor under, contracts with the state, acting
132 through any of its departments, commissions or other agencies, except
133 the Department of Administrative Services, the Department of
134 Transportation and the constituent units of the state system of higher
135 education, for one or more causes set forth under subsection (d) of this
136 section. The commissioner may initiate a disqualification proceeding
137 only after consulting with the contract awarding agency, if any, and
138 the Attorney General and shall provide notice and an opportunity for a
139 hearing to the contractor who is the subject of the proceeding. The
140 hearing shall be conducted in accordance with the contested case
141 procedures set forth in chapter 54. The commissioner shall issue a
142 written decision within ninety days of the last date of such hearing and

143 state in the decision the reasons for the action taken and, if the
144 contractor is being disqualified, the period of such disqualification.
145 The existence of a cause for disqualification shall not be the sole factor
146 to be considered in determining whether the contractor shall be
147 disqualified. In determining whether to disqualify a contractor, the
148 commissioner shall consider the seriousness of the contractor's acts or
149 omissions and any mitigating factors. The commissioner shall send the
150 decision to the contractor by certified mail, return receipt requested.
151 The written decision shall be a final decision for the purposes of
152 sections 4-180 and 4-183.

153 (d) Causes for disqualification from bidding on, or participating in,
154 contracts shall include the following:

155 (1) Conviction or entry of a plea of guilty or nolo contendere for or
156 admission to commission of a criminal offense as an incident to
157 obtaining or attempting to obtain a public or private contract or
158 subcontract, or in the performance of such contract or subcontract;

159 (2) Conviction or entry of a plea of guilty or nolo contendere or
160 admission to the violation of any state or federal law for
161 embezzlement, theft, forgery, bribery, falsification or destruction of
162 records, receiving stolen property or any other offense indicating a
163 lack of business integrity or business honesty which affects
164 responsibility as a state contractor;

165 (3) Conviction or entry of a plea of guilty or nolo contendere or
166 admission to a violation of any state or federal antitrust, collusion or
167 conspiracy law arising out of the submission of bids or proposals on a
168 public or private contract or subcontract;

169 (4) A wilful failure to perform in accordance with the terms of one
170 or more public contracts, agreements or transactions;

171 (5) A history of failure to perform or of unsatisfactory performance
172 of one or more public contracts, agreements or transactions; or

173 (6) A wilful violation of a statutory or regulatory provision or
174 requirement applicable to a public contract, agreement or transaction.

175 (e) For purposes of a disqualification proceeding under this section,
176 conduct may be imputed as follows:

177 (1) The fraudulent, criminal or other seriously improper conduct of
178 any officer, director, shareholder, partner, employee or other
179 individual associated with a contractor may be imputed to the
180 contractor when the conduct occurred in connection with the
181 individual's performance of duties for or on behalf of the contractor
182 and the contractor knew of or had reason to know of such conduct.
183 The term "other seriously improper conduct" shall not include advice
184 from an attorney, accountant or other paid consultant if it was
185 reasonable for the contractor to rely on such advice.

186 (2) The fraudulent, criminal or other seriously improper conduct of
187 a contractor may be imputed to any officer, director, shareholder,
188 partner, employee or other individual associated with the contractor
189 who participated in, knew of or had reason to know of the contractor's
190 conduct.

191 (3) The fraudulent, criminal or other seriously improper conduct of
192 one contractor participating in a joint venture or similar arrangement
193 may be imputed to other participating contractors if the conduct
194 occurred for or on behalf of the joint venture or similar arrangement
195 and these contractors knew of or had reason to know of such conduct.

196 (f) The commissioner may reduce the period or extent of
197 disqualification, upon the contractor's request, supported by
198 documentation, for the following reasons:

199 (1) Newly discovered material evidence;

200 (2) Reversal of the conviction upon which the disqualification was
201 based;

202 (3) Bona fide change in ownership or management;

203 (4) Elimination of other causes for which the disqualification was
204 imposed; or

205 (5) Other reasons the commissioner deems appropriate.

206 (g) The commissioner may grant an exception permitting a
207 disqualified contractor to participate in a particular contract or
208 subcontract upon a written determination by the head of the contract
209 awarding agency that there is good cause, in the interest of the public,
210 for such action.

211 Sec. 4. Section 31-57d of the general statutes is repealed and the
212 following is substituted in lieu thereof (*Effective July 1, 2010*):

213 (a) As used in this section, the term "contractor" [shall mean] means
214 any person, firm or corporation which has contracted or seeks to
215 contract with the state, or to participate in such a contract, in
216 connection with any public works of the state or a political subdivision
217 of the state.

218 (b) Disqualification of a contractor is a serious action that shall be
219 used only in the public interest and for the state government's
220 protection and not for purposes of punishment or in lieu of other
221 applicable enforcement or compliance procedures. The causes for and
222 consequences of disqualification under this section shall be separate
223 from and in addition to causes for and consequences of
224 disqualification under sections [4b-95,] 31-53a, 31-57a and 31-57b.

225 (c) The Commissioner of Transportation may disqualify any
226 contractor, for up to [two] five years, from bidding on, applying for, or
227 participating as a subcontractor under, contracts with the state, acting
228 through the Department of Transportation, for one or more causes set
229 forth under subsection (d) of this section. The commissioner may
230 initiate a disqualification proceeding only after consulting with the
231 Attorney General and shall provide notice and an opportunity for a

232 hearing to the contractor who is the subject of the proceeding. The
233 hearing shall be conducted in accordance with the contested case
234 procedures set forth in chapter 54. The commissioner shall issue a
235 written decision within ninety days of the last date of such hearing and
236 state in the decision the reasons for the action taken and, if the
237 contractor is being disqualified, the period of such disqualification.
238 The existence of a cause for disqualification does not require that the
239 contractor be disqualified. In determining whether to disqualify a
240 contractor, the commissioner shall consider the seriousness of the
241 contractor's acts or omissions and any mitigating factors. The
242 commissioner shall send the decision to the contractor by certified
243 mail, return receipt requested. The written decision shall be a final
244 decision for the purposes of sections 4-180 and 4-183.

245 (d) Causes for disqualification from bidding on, or participating in,
246 contracts shall include the following:

247 (1) Conviction or entry of a plea of guilty or nolo contendere for or
248 admission to commission of a criminal offense as an incident to
249 obtaining or attempting to obtain a public or private contract or
250 subcontract, or in the performance of such contract or subcontract;

251 (2) Conviction or entry of a plea of guilty or nolo contendere or
252 admission to the violation of any state or federal law for
253 embezzlement, theft, forgery, bribery, falsification or destruction of
254 records, receiving stolen property or any other offense indicating a
255 lack of business integrity or business honesty which affects
256 responsibility as a state contractor;

257 (3) Conviction or entry of a plea of guilty or nolo contendere or
258 admission to a violation of any state or federal antitrust, collusion or
259 conspiracy law arising out of the submission of bids or proposals on a
260 public or private contract or subcontract;

261 (4) A wilful failure to perform in accordance with the terms of one
262 or more public contracts, agreements or transactions;

263 (5) A history of failure to perform or of unsatisfactory performance
264 of one or more public contracts, agreements or transactions; or

265 (6) A wilful violation of a statutory or regulatory provision or
266 requirement applicable to a public contract, agreement or transaction.

267 (e) For purposes of a disqualification proceeding under this section,
268 conduct may be imputed as follows:

269 (1) The fraudulent, criminal or other seriously improper conduct of
270 any officer, director, shareholder, partner, employee or other
271 individual associated with a contractor may be imputed to the
272 contractor when the conduct occurred in connection with the
273 individual's performance of duties for or on behalf of the contractor
274 and the contractor knew of or had reason to know of such conduct.
275 The term "other seriously improper conduct" shall not include advice
276 from an attorney, accountant or other paid consultant if it was
277 reasonable for the contractor to rely on such advice.

278 (2) The fraudulent, criminal or other seriously improper conduct of
279 a contractor may be imputed to any officer, director, shareholder,
280 partner, employee or other individual associated with the contractor
281 who participated in, knew of or had reason to know of the contractor's
282 conduct.

283 (3) The fraudulent, criminal or other seriously improper conduct of
284 one contractor participating in a joint venture or similar arrangement
285 may be imputed to other participating contractors if the conduct
286 occurred for or on behalf of the joint venture or similar arrangement
287 and these contractors knew of or had reason to know of such conduct.

288 (f) The commissioner may reduce the period or extent of
289 disqualification, upon the contractor's request, supported by
290 documentation, for the following reasons:

291 (1) Newly discovered material evidence;

292 (2) Reversal of the conviction upon which the disqualification was
293 based;

294 (3) Bona fide change in ownership or management;

295 (4) Elimination of other causes for which the disqualification was
296 imposed; or

297 (5) Other reasons the commissioner deems appropriate.

298 (g) The commissioner may grant an exception permitting a
299 disqualified contractor to participate in a particular contract or
300 subcontract upon a written determination that there is good cause, in
301 the interest of the public, for such action.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2010</i>	4b-95
Sec. 2	<i>July 1, 2010</i>	4a-100(c)
Sec. 3	<i>July 1, 2010</i>	31-57c
Sec. 4	<i>July 1, 2010</i>	31-57d

Statement of Purpose:

To delete a limited provision concerning disqualification because there are more comprehensive statutes concerning disqualification, and to extend from two to five years the period that a state contractor may be disqualified.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]